

FILED IN THE
U.S. DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

Sep 28, 2022

SEAN F. McAVOY, CLERK

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

LAWRENCE S.,¹

Plaintiff,

v.

KILOLO KIJAKAZI, Acting
Commissioner of Social Security,

Defendant.

No. 4:21-cv-5104-EFS

**ORDER GRANTING PLAINTIFF'S
SUMMARY-JUDGMENT MOTION,
DENYING DEFENDANT'S
SUMMARY-JUDGMENT MOTION,
AND REMANDING FOR FURTHER
PROCEEDINGS**

Plaintiff Lawrence S. appeals the denial of benefits by the Administrative Law Judge (ALJ). Because the ALJ's persuasiveness findings as to certain medical opinions are not supported by substantial evidence, the Court holds that the ALJ reversibly erred. This matter is remanded for further proceedings.

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¹ For privacy reasons, the Court refers to Plaintiff by first name and last initial or as "Plaintiff." See LCivR 5.2(c).

I. Five-Step Disability Determination

A five-step evaluation determines whether an adult claimant is disabled.² Step one assesses whether the claimant is engaged in substantial gainful activity.³ If the claimant is engaged in substantial gainful activity, benefits are denied.⁴ If not, the disability evaluation proceeds to step two.⁵

Step two assesses whether the claimant has a medically severe impairment or combination of impairments that significantly limit the claimant's physical or mental ability to do basic work activities.⁶ If the claimant does not, benefits are denied.⁷ If the claimant does, the disability evaluation proceeds to step three.⁸

Step three compares the claimant's impairment or combination of impairments to several recognized by the Commissioner as so severe as to preclude substantial gainful activity.⁹ If an impairment or combination of impairments

² 20 C.F.R. §416.920(a).

³ *Id.* § 416.920(a)(4)(i).

⁴ *Id.* § 416.920(b).

⁵ *Id.* § 416.920(b).

⁶ *Id.* § 416.920(a)(4)(ii).

⁷ *Id.* § 416.920(c).

⁸ *Id.* § 416.920(c).

⁹ *Id.* § 416.920(a)(4)(iii).

1 meets or equals one of the listed impairments, the claimant is conclusively
 2 presumed to be disabled.¹⁰ If not, the disability evaluation proceeds to step four.

3 Step four assesses whether an impairment prevents the claimant from
 4 performing work he performed in the past by determining the claimant's residual
 5 functional capacity (RFC).¹¹ If the claimant can perform past work, benefits are
 6 denied.¹² If not, the disability evaluation proceeds to step five.

7 Step five, the final step, assesses whether the claimant can perform other
 8 substantial gainful work—work that exists in significant numbers in the national
 9 economy—considering the claimant's RFC, age, education, and work experience.¹³
 10 If so, benefits are denied. If not, benefits are granted.¹⁴

11 The claimant has the initial burden of establishing he is entitled to disability
 12 benefits under steps one through four.¹⁵ At step five, the burden shifts to the
 13 Commissioner to show the claimant is not entitled to benefits.¹⁶

15 ¹⁰ 20 C.F.R. § 416.920(d).

16 ¹¹ *Id.* § 416.920(a)(4)(iv).

17 ¹² *Id.* § 416.920(a)(4)(iv).

18 ¹³ 20 C.F.R. § 416.920(a)(4)(v); *Kail v. Heckler*, 722 F.2d 1496, 1497–98 (9th Cir.
 19 1984).

20 ¹⁴ 20 C.F.R. § 416.920(g).

21 ¹⁵ *Parra v. Astrue*, 481 F.3d 742, 746 (9th Cir. 2007).

22 ¹⁶ *Id.*

II. Factual and Procedural Summary

In February 2019, Plaintiff filed a Title 16 application alleging disability beginning January 1, 2019.¹⁷ His claim was denied initially and on reconsideration. In November 2020, ALJ Jesse K. Shumway held an administrative hearing at which he received testimony from Plaintiff and a vocational expert. After the hearing, the ALJ issued a decision denying Plaintiff's disability application and finding:

- Step one: Plaintiff had not engaged in substantial gainful activity since February 25, 2019, the application date.
- Step two: Plaintiff had the following medically determinable severe impairments: degenerative disc disease of the cervical and lumbar spine; right ankle sprain, status post repair; headaches; specific learning disorder with impairment in reading; mood disorder; intermittent explosive disorder; attention deficit hyperactivity disorder (ADHD); and panic disorder.
- Step three: Plaintiff did not have an impairment or combination of impairments that met or medically equaled the severity of one of the listed impairments.
- RFC: Plaintiff had the RFC perform a full range of sedentary work, subject to the following additional limitations:

¹⁷ AR 234.

- he can only occasionally operate foot controls with the right lower extremity;
 - he can never climb ladders, ropes, or scaffolds;
 - he can never crouch or crawl;
 - he can occasionally perform all other postural activities;
 - he can occasionally reach overhead;
 - he can have no exposure to hazards (e.g., unprotected heights and moving mechanical parts);
 - he can have no more than occasional exposure to extreme cold and vibration;
 - he is limited to simple, routine tasks;
 - he can have only occasional, superficial contact with the public, supervisors, and coworkers; and
 - he requires a routine, predictable work environment with no more than occasional changes.
- Step four: Plaintiff was not capable of performing past relevant work.
 - Step five: Considering Plaintiff's RFC, age, education, and work history, Plaintiff could perform work that existed in significant numbers in the national economy, such as "Document Preparer," "Polisher, Eyeglass Frames," and "Table Worker." As an alternative finding, the ALJ further found that Plaintiff could still perform these jobs even if further limited "working in a moderate noise environment; needed the option to wear eye

1 protection if exposed to bright lights; and was likely to miss one day of
 2 work per month).”¹⁸

3 In reaching his decision, the ALJ found:

- 4 • Largely persuasive the October 2019 reviewing opinions of State agency
 5 medical consultant Guillermo Rubio, MD, and Norman Staley, MD.¹⁹
- 6 • Generally persuasive the October 2019 reviewing opinions of State
 7 agency psychological consultants Vincent Gollogly, PhD, and Kent Reade,
 8 PhD.²⁰
- 9 • Somewhat persuasive the October 2018 opinions of treating physician
 10 Brent Thielges, DPM.²¹
- 11 • Somewhat persuasive the September 2019 opinions provided in a
 12 consultative psychological evaluation by Ioly Lewis, ARNP.²²
- 13 • Not persuasive the August 2020 opinions provided on a medical report
 14 form by treating physician Ralph Laraiso, DO.²³

17 ¹⁸ AR 29.

18 ¹⁹ AR 25.

19 ²⁰ AR 25–26.

20 ²¹ AR 26.

21 ²² AR 26–27.

22 ²³ AR 27.

- Not persuasive the August 2020 opinions provided on a medical report form by Angela Hamela, ARNP, PMHNP.²⁴

The ALJ also found Plaintiff's medically determinable impairments could reasonably be expected to cause some of the alleged symptoms, but his statements concerning the intensity, persistence, and limiting effects of those symptoms were "not entirely consistent with the medical evidence and other evidence in the record for the reasons explained in this decision."²⁵

Plaintiff requested review of the ALJ's decision by the Appeals Council, which denied review.²⁶ Plaintiff then appealed to this Court.

III. Standard of Review

A district court's review of the Commissioner's final decision is limited.²⁷ The Commissioner's decision is set aside "only if it is not supported by substantial evidence or is based on legal error."²⁸ Substantial evidence is "more than a mere scintilla but less than a preponderance; it is such relevant evidence as a reasonable

²⁴ AR 27.

²⁵ AR 21.

²⁶ AR 1.

²⁷ 42 U.S.C. § 405(g).

²⁸ *Hill v. Astrue*, 698 F.3d 1153, 1158 (9th Cir. 2012).

1 mind might accept as adequate to support a conclusion.”²⁹ Moreover, because it is
 2 the role of the ALJ—and not the Court—to weigh conflicting evidence, the Court
 3 upholds the ALJ’s findings “if they are supported by inferences reasonably drawn
 4 from the record.”³⁰ The Court considers the entire record.³¹

5 Further, the Court may not reverse an ALJ decision due to a harmless
 6 error.³² An error is harmless “where it is inconsequential to the ultimate
 7 nondisability determination.”³³

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12 ²⁹ *Hill*, 698 F.3d at 1159 (quoting *Sandgathe v. Chater*, 108 F.3d 978, 980 (9th Cir.
 13 1997)).

14 ³⁰ *Molina v. Astrue*, 674 F.3d 1104, 1111 (9th Cir. 2012).

15 ³¹ *Lingenfelter v. Astrue*, 504 F.3d 1028, 1035 (9th Cir. 2007) (The court “must
 16 consider the entire record as a whole, weighing both the evidence that supports and
 17 the evidence that detracts from the Commissioner's conclusion,” not simply the
 18 evidence cited by the ALJ or the parties.) (cleaned up); *Black v. Apfel*, 143 F.3d 383,
 19 386 (8th Cir. 1998) (“An ALJ’s failure to cite specific evidence does not indicate that
 20 such evidence was not considered[.]”).

21 ³² *Molina*, 674 F.3d at 1111.

22 ³³ *Id.* at 1115 (cleaned up).

IV. Analysis

Plaintiff argues that the ALJ erred by (1) not properly assessing certain medical opinions, (2) improperly discounting Plaintiff's symptom testimony, and (3) failing to properly assess Plaintiff's hand disorders.³⁴ For the reasons that follow, the Court holds that the ALJ reversibly erred by failing to properly articulate its consideration of the medical-opinion evidence, and this matter is therefore remanded for further proceedings.

A. Medical Opinions: Plaintiff establishes consequential error.

Plaintiff challenges the ALJ's assessment of the medical opinions provided by Dr. Laraiso, ARNP Hamel, and ARNP Lewis.³⁵

1. Standard for Medical-Opinion Analysis³⁶

An ALJ must consider and evaluate the persuasiveness of all medical opinions or prior administrative medical findings.³⁷ The factors for evaluating the

³⁴ See generally, ECF No. 12.

³⁵ ECF No. 12 at 18–21.

³⁶ For claims filed on or after March 27, 2017, such as Plaintiff's claims, new regulations apply that change the framework for how an ALJ must evaluate medical opinion evidence. Revisions to Rules Regarding the Evaluation of Medical Evidence, 2017 WL 168819, 82 Fed. Reg. 5844-01 (Jan. 18, 2017); 20 C.F.R. § 416.920c.

³⁷ 20 C.F.R. § 416.920c(a), (b).

1 persuasiveness of medical opinions and prior administrative medical findings
2 include, but are not limited to, supportability, consistency, relationship with the
3 claimant, and specialization.³⁸ Supportability and consistency are the most
4 important factors, and the ALJ is required to explain how both of these factors
5 were considered.³⁹

6 (1) Supportability. The more relevant the objective medical evidence
7 and supporting explanations presented by a medical source are to
8 support his or her medical opinion(s) or prior administrative medical
9 finding(s), the more persuasive the medical opinions or prior
10 administrative medical finding(s) will be.

11 (2) Consistency. The more consistent a medical opinion(s) or prior
12 administrative medical finding(s) is with the evidence from other
13 medical sources and nonmedical sources in the claim, the more
14 persuasive the medical opinion(s) or prior administrative medical
15 finding(s) will be.⁴⁰

16 Typically, the ALJ may, but is not required to, explain how the other factors were
17 considered.⁴¹

18 ³⁸ 20 C.F.R. § 416.920c(c)(1)–(5).

19 ³⁹ *Id.* § 416.920c(b)(2).

20 ⁴⁰ *Id.* § 416.920c(c)(1)–(2).

21 ⁴¹ *Id.* § 416.920c(b)(2). When two or more medical opinions or prior administrative
22 findings “about the same issue are both equally well-supported . . . and consistent
23 with the record . . . but are not exactly the same,” the ALJ is required to explain
how “the other most persuasive factors in paragraphs (c)(3) through (c)(5)” were
considered. *Id.* § 416.920c(b)(3).

2. Dr. Laraiso: The ALJ failed to address the consistency factor.

In finding Dr. Laraiso's August 2020 medical report not persuasive, the ALJ gave the following summary and analysis:

In this form, Dr. Laraiso opined that the claimant would have to lie down during the day; that the claimant was most likely at risk for further injury with work on a regular and continuing basis; and that the claimant would miss three days of work on average per month because of his medical impairments. Dr. Laraiso's opinion was given in a check-box form and was not well supported with any meaningful explanation. For example, he provided no explanation for why the claimant would have to lie down during the day and did not specify how long he would need to lie down (therefore it is not even clear whether he felt the claimant's need to lie down would exceed normal breaks). He provided no explanation for why the claimant would miss three days of work per month. Overall, his opinion is conclusory and vague and not probative as opinion evidence. Moreover, his opinion that the claimant would miss three days of work per month, particularly with no explanation in support, is appropriately understood as an opinion that the claimant cannot work at times, which opines on an issue that is reserved to the Commissioner. Therefore, this aspect of his opinion is inherently neither valuable nor persuasive.⁴²

a. The ALJ's Errors as to Dr. Laraiso's Opinions

Some of the ALJ's analysis includes valid considerations that, if supported by substantial evidence in the record, could reasonably support his finding that Dr. Laraiso's medical opinions were unpersuasive. For instance, although Dr. Laraiso's entries in the medical-report form make clear that the limitations opined therein stem from Plaintiff's chronic low-back pain (potentially in conjunction with noted medication side effects)—all of which appear consistent

⁴² AR 27 (cleaned up) (citing AR 1079–80).

1 with Dr. Laraiso’s treatment notes⁴³—the ALJ is nonetheless correct that
2 Dr. Laraiso failed to articulate how long or how frequently Plaintiff would need to
3 lie down.⁴⁴ However, as Plaintiff points out, “the ALJ did not give any articulation
4 as to the consistency of [Dr. Laraiso’s] medical opinion[s] with other opinions and
5 evidence in the record.”⁴⁵

6 “Even under the new regulations, an ALJ cannot reject an examining or
7 treating doctor’s opinion as unsupported or inconsistent without providing an
8 explanation supported by substantial evidence.”⁴⁶ The new regulations still
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10 ⁴³ See AR 1080–81; *see also, e.g.*, AR 1082–91 (08/04/2020: “Diagnoses of Chronic
11 low back pain without sciatica, unspecified back pain laterall[y], Spinal stenosis of
12 lumbar region, unspecified whether neurogenic claudication present, Encounter for
13 long-term use of opiate analgesic, Cervical radicular pain, Neck pain, Occipital
14 neuralgia, unspecified laterality, Paresthesias, Lumbar facet arthropathy, Facet
15 arthritis of cervical region, and DOD (degenerative disc disease), cervical were
16 pertinent to this visit.”).

17 ⁴⁴ “While an opinion cannot be rejected merely for being expressed as answers to a
18 check-the-box questionnaire, the ALJ may permissibly reject check-off reports that
19 do not contain any explanation of the bases of their conclusions.” *Ford v. Saul*, 950
20 F.3d 1141, 1155 (9th Cir. 2020) (cleaned up).

21 ⁴⁵ ECF No. 12 at 19.

22 ⁴⁶ *Woods v. Kijakazi*, 32 F.4th 785, 792 (9th Cir. 2022).
23

1 require the ALJ to consider the consistency of a medical opinion with evidence from
2 other medical sources.⁴⁷ For this reason, the Court finds the ALJ's analysis of
3 consistency regarding Dr. Laraiso's opinions fails to comply with the new
4 regulations.

5 Additionally, the Court notes that an ALJ may discount an opinion due to
6 vagueness if the opinion is not supported, but if the opinion is supported by
7 examination findings, then the ALJ has a duty to develop the record to clarify any
8 consequential ambiguities either contained in or caused by the opinion before
9 discounting it for vagueness.⁴⁸ Moreover, Plaintiff's likely rate of absenteeism and
10 need to lie down are not issues reserved for the Commissioner "but instead an
11 assessment, based on objective medical evidence, of [Plaintiff]'s likelihood of being
12 able to sustain full time employment given the many medical and mental
13 impairments [Plaintiff] faces."⁴⁹

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15 ⁴⁷ See 20 C.F.R. § 416.920c(b)(2), (c)(2).

16 ⁴⁸ See *Smolen v. Chater*, 80 F.3d 1273, 1288 (9th Cir. 1996) ("If the ALJ thought he
17 needed to know the basis of [the physician]'s opinions in order to evaluate them, he
18 had a duty to conduct an appropriate inquiry, for example, by subpoenaing the
19 physicians or submitting further questions to them.").

20 ⁴⁹ See *Hill*, 698 F.3d at 1160; see also 20 C.F.R. § 416.913(a)(2) (A "medical opinion"
21 includes any statement regarding whether the claimant has one or more
22 impairment-related limitations in the ability to perform the demands of work
23

1 *b. Conclusion as to Dr. Laraiso*

2 Because the ALJ failed to conduct the mandated analysis as to the
3 persuasiveness of Dr. Laraiso's opinions, the ALJ's finding is not supported by
4 substantial evidence. Had Dr. Laraiso's opinions been fully incorporated into the
5 assessed RFC, the vocational expert's testimony establishes Plaintiff would have
6 necessarily been found disabled.⁵⁰ Further proceedings are required for the ALJ to
7 reevaluate Dr. Laraiso's opinions and to expressly conduct the consistency analysis
8 as required by the applicable regulations.

9 3. ARNP Hamel: The ALJ's consistency finding lacks substantial
10 supporting evidence.

11 In finding ARNP Hamel's August 2020 opinions not persuasive, the ALJ
12 gave the following summary and analysis:

13 This provider's assessments (of mostly "markedly" or "severely"
14 limited mental abilities and substantial time off task and days of work
15 missed per month) are not well supported or consistent with the
16 record as a whole. Ms. Hamel's opinion was provided in checkbox
17 form with no explanation in support. Moreover, her opinion is notably
18 inconsistent with the record as a whole, which, as noted above,

19 _____
20 activities.); *id.* § 416.913(a)(3) ("[O]ther medical evidence" includes prognoses and
21 "judgments about the nature and severity of [the claimant's] impairments.").

22 ⁵⁰ See AR 103 (testifying that an absence rate higher than one day per month
23 would preclude competitive employment).

1 reflects little mental health treatment and typically only mild reports
2 of anxiety and depression in PHQ-9 and GAD-7 instruments.⁵¹

3 *a. The ALJ's Errors as to ARNP Hamel's Opinions*

4 Again, an ALJ may validly reject a medical opinion based on a lack of
5 support and inconsistency with other evidence.⁵² However, the sparse consistency
6 analysis provided in the ALJ's decision is unsupported by substantial evidence.
7 The only inconsistency noted by the ALJ between ARNP Hamel's opinions and
8 other evidence was that the record supposedly "reflects little mental health
9 treatment and typically only mild reports of anxiety and depression in PHQ-9 and
10 GAD-7 instruments."⁵³ In support of this assertion, the ALJ primarily cited to
11 several relatively recent instances in which Plaintiff's PHQ-9 and GAD-7 results
12 were recorded as being mild to moderate.

13 When viewed as a whole, however, the record shows that from about March
14 2018 through October 2019, Plaintiff's scores on the PHQ-9 depression scale
15 generally hovered around 16 (moderately severe) with a few spikes ranging from 20
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17
18

19 ⁵¹ AR 27 (citing AR 1237–38 (02/04/2020), 1248–49 (03/04/2020), 1265 (05/05/2020),
20 1282 (06/08/2020), 1294 (07/02/2020)).

21 ⁵² See *Bray v. Comm'r of Soc. Sec. Admin.*, 554 F.3d 1219, 1228 (9th Cir. 2009).

22 ⁵³ AR 27.
23

1 to 23 (severe).⁵⁴ During that same period, Plaintiff's scores on the GAD-7 anxiety
2 scale had more variability, but were generally around a 13 (moderate) with several
3 spikes from 16 to 19 (severe).⁵⁵ At the end of November 2019, Plaintiff scored 13
4 (moderate) on both scales.⁵⁶ Then, from January 2020 through about August 2020,
5 Plaintiff had a series of low scores on both scales: 8 or below on the PHQ-9, and 9
6 or below on the CAD-7.⁵⁷

7 When an ALJ relies upon example medical records to discount other
8 evidence, the records selected "must in fact constitute examples of a broader
9 development."⁵⁸ Here, after more than a year and a half of moderate and severe
10 PHQ-9 and GAD-7 results, the record shows mild results during only the last 7–8
11 months. For much of that time, Plaintiff was receiving treatment for depression,
12 anxiety, anger, and sleep issues.⁵⁹ And, aside from potential improvement
13

14 ⁵⁴ See AR 619–622, 625, 643–647, 667, 705–09, 875–77, 965–69, 1006–07, 1098–
15 1103.

16 ⁵⁵ See *id.*

17 ⁵⁶ AR 1005–09.

18 ⁵⁷ See AR 1082–91, 1227, 1235–43, 1245–52, 1261–68, 1279–86, 1290–98.

19 ⁵⁸ *Garrison v. Colvin*, 759 F.3d 995, 1018 (9th Cir. 2014)

20 ⁵⁹ See, e.g., AR 619–622, 643–47, 667, 705–09, 875–77, 965–969, 986–990, 1005–
21 1009, 1098–1103 (collectively, treatment notes ranging from March 2018 through
22 January 2020).

1 resulting from treatment, it is commonly understood that the symptoms of
2 depressive and anxiety disorders may often wax and wane.⁶⁰

3 Yet, the ALJ discussed neither the possibility of improvement or
4 waxing/waning symptoms and instead inaccurately pointed to Plaintiff's latest and
5 lowest PHQ-9 and GAD-7 results as being "typical." Without at least an
6 explanation as to why these latest exam results should carry more weight than all
7 the others—and why they do not reflect the waxing and waning common to such
8 mental impairments—the Court cannot find that substantial evidence supports the
9 ALJ's findings and inferences drawn from Plaintiff's PHQ-9 and GAD-7 scores.⁶¹

10 *b. Conclusion as to ARNP Hamel's Opinions*

11 Given Plaintiff's longitudinal treatment history, and the lack of a
12 meaningful explanation by the ALJ as to why the cited medical records warranted
13 greater weight than those omitted, the ALJ's consistency analysis as to ARNP
14 Hamel's opinions is not supported by substantial evidence. Further proceedings
15 are required for the ALJ to reevaluate ARNP Hamel's opinions.

18 ⁶⁰ See *Garrison*, 759 F.3d at 1017 ("Cycles of improvement and debilitating
19 symptoms are a common occurrence. . . .").

20 ⁶¹ *Embrey v. Bowen*, 849 F.2d 418, 421–22 (9th Cir. 1988) (requiring the ALJ to
21 identify the evidence supporting the found conflict to permit the Court to
22 meaningfully review the ALJ's finding).

4. ARNP Lewis: The ALJ erred in his analysis of the consistency factor.

The ALJ found “somewhat persuasive” the opinions contained in ARNP Lewis’s September 2019 psychological evaluation of Plaintiff.⁶² The ALJ, in relevant part, gave the following summary and analysis:

She assessed his ability to interact with coworkers, superiors, and the public and his ability to adapt to the usual stresses encountered in the workplace as “poor” based on his interpersonal presentation. . . . However, the record as a whole indicates the claimant has been no more than moderately limited in any functional domain (to the extent Ms. Lewis’s assessment of “fair” abilities might indicate greater than moderate limitations), given his typically unremarkable mental presentation and his repeated PHQ-9 and GAD-7 scores indicating only mild levels of depression and anxiety. With respect to her assessment of “poor” abilities in interaction and adapting to stress, this is not consistent with the record as a whole. This was based on the claimant’s interpersonal presentation at that time. It is noted that the claimant presented as very irritable with fidgety psychomotor behavior. However, throughout the record the claimant has typically presented as pleasant and/or cooperative, indicating that Ms. Lewis’s one-time findings do not support her assessment of poor abilities.⁶³

a. The ALJ’s Errors as to ARNP Lewis Opinions

As a preliminary matter, as discussed above, the ALJ’s assessment of Plaintiff’s PHQ-9 and GAD-7 scores is unsupported by substantial evidence. Further, at the point when ARNP Lewis conducted her psychological evaluation in September 2019, Plaintiff’s scores in both categories had been consistently in the moderate-to-severe range. Moreover, the ALJ did not explain why—even if those

⁶² AR 26–27; *see* 785–90.

⁶³ AR 26–27 (cleaned up).

1 scores had indicated “only mild levels of depression and anxiety”—they would
2 undermine ARNP Lewis’s opinions as to Plaintiff’s irritability, his ability to adapt
3 to the usual stresses encountered in the workplace, or how he would be able to
4 interact with coworkers, supervisors, and/or the public.⁶⁴

5 Because the Court is already remanding this case for further proceedings, it
6 need not determine whether substantial evidence supports the ALJ’s assertion that
7 “throughout the record the claimant has typically presented as pleasant and/or
8 cooperative,” nor whether this amounts to a rational reason to discount
9 ARNP Lewis’s opinions.⁶⁵ The Court notes, however, that Plaintiff consistently
10 reported to his treatment providers problems with anger and irritability.⁶⁶ Also,
11 the record contains numerous references to Plaintiff presenting as irritated,
12 anxious, depressed, distracted, and/or poorly groomed. Indeed, several such
13 references are found in the very records the ALJ cites to suggest that Plaintiff
14 tends to be pleasant or cooperative.⁶⁷ And many of the other records cited by the
15

16 ⁶⁴ See AR 785–90.

17 ⁶⁵ AR 27.

18 ⁶⁶ See, e.g., AR 705–709, 785–90, 875–877, 965–69, 986–990.

19 ⁶⁷ See, e.g., AR 619–22 (05/14/2019: appearing “cooperative, disheveled, good eye
20 contact, tense, guarded”; mood was “anxious, irritable, dysphoric” with congruent
21 affect); AR 974–77 (08/15/2019: “Pleasant”; “Psychiatric/Behavioral: Positive for
22 agitation, confusion and decreased concentration. . . . The patient is
23

1 ALJ were written by treatment providers seeing Plaintiff for issues unrelated to
2 mental health.⁶⁸

3 *b. Conclusion as to ARNP Lewis's Opinions*

4 The ALJ erred in his analysis of ARNP Lewis's opinions. On remand, the
5 ALJ shall reassess ARNP Lewis's opinions, specifically explaining how the
6 supportability and consistency factors affect persuasiveness.

7 **B. Step Two: Reevaluation is warranted.**

8 Plaintiff further argues that the ALJ did not properly assess his carpal
9 tunnel syndrome and ulnar neuropathy. Because the Court is already remanding
10 for reevaluation of the medical opinions which, in turn, will require reevaluation of
11 the rest of the medical evidence, the Court finds a reevaluation of Plaintiff's severe
12 medically determinable impairments is also warranted. As such, the Court need
13 not specifically address this argument by Plaintiff.

14
15 nervous/anxious."); AR 1005–09 (11/26/2019: appearing "distracted with his phone
16 during most of the conversation . . . slightly irritated but is cooperative, grooming
17 is poor"; mood observed as "[l]ess angry but still irritable" with congruent affect).

18 ⁶⁸ See *Orn*, 495 F.3d at 634 (explaining that medical records must be read in their
19 treatment context); see also *Ghanim v. Colvin*, 763 F.3d 1154, 1164 (9th Cir. 2014)
20 (finding the ALJ erred by rejecting the claimant's symptoms resulting from
21 anxiety, depressive disorder, and PTSD on the basis that claimant performed
22 cognitively well during examination and had a generally pleasant demeanor).

1 “At the second step of sequential evaluation ... medical evidence alone is
 2 evaluated in order to assess the effects of the impairment(s) on ability to do basic
 3 work activities.”⁶⁹ On remand, therefore, the Court encourages the ALJ to
 4 specifically address the medical evidence of record pertaining to Plaintiff’s carpal
 5 tunnel syndrome in his left hand, with symptoms appearing to date back to April
 6 2019.⁷⁰

7 **C. Plaintiff’s Symptom Reports: Reevaluation is warranted.**

8 Plaintiff argues the ALJ failed to provide valid reasons for discounting his
 9 symptom reports. Because the ALJ’s weighing of the medical evidence impacted
 10 his weighing of Plaintiff’s symptom reports, the Court need not analyze this claim
 11 of error. Still, as discussed above, without additional explanation, Plaintiff’s PHQ-
 12 9 and CAD-7 scores do not amount to substantial evidence supporting the rejection
 13 of Plaintiff’s mental-impairment symptom reports.

14 On remand, if the ALJ discounts Plaintiff’s symptom testimony, the ALJ
 15 must be specific about which testimony is being rejected and cite to specific
 16

17 ⁶⁹ SSR 85-28 at *4; *see* 20 C.F.R. § 416.921.

18 ⁷⁰ *See, e.g.*, AR 1271 (“Conduction studies demonstrate median nerve conduction
 19 block at the wrist which is moderate to severe on the right and moderate on the
 20 left.”); AR 628–31 (04/19/2019: “He reports numbness and tingling in all 10 digits of
 21 both hands . . .”). *Cf. also* AR 1312–13 (08/11/2020: showing carpal-tunnel release
 22 surgery on Plaintiff’s right wrist only).
 23

1 evidence to explain why each symptom is being rejected. The ALJ's reasons for
2 rejecting the symptom testimony must be clear and convincing. Also, to provide
3 further guidance on remand, the Court briefly notes that: (1) chronic pain
4 frequently affects mental disorders,⁷¹ and providers have indicated this may be
5 true for Plaintiff;⁷² (2) although the tendency to exaggerate may be a valid reason
6 to discount symptom testimony,⁷³ pain reports on a 1–10 scale are inherently
7 subjective and of limited value when assessing a claimant's credibility;⁷⁴ (3) ALJs
8
9

10 ⁷¹ See *Lester v. Chater*, 81 F.3d 821, 829–30 (9th Cir. 1996) (noting that, for
11 claimant with chronic pain syndrome and affective disorder, the consequences of
12 the physical and mental impairments were inextricably linked and the
13 Commissioner “erred as a matter of law in isolating the effects of [the claimant’s]
14 physical impairment from the effects of his mental impairment”).

15 ⁷² AR 700 (05/02/2018: noting, “Chronic pain likely contributing” to depression with
16 anxiety).

17 ⁷³ See *Tonapetyan v. Halter*, 242 F.3d 1144, 1148 (9th Cir. 2001).

18 ⁷⁴ See *Fair v. Bowen*, 885 F.2d 597, 601 (9th Cir. 1989) (warning against relying too
19 heavily on pain-scale reports, noting that a claimant's ranking “is of only marginal
20 assistance to a decisionmaker whose own subjective one-to-ten scale may differ
21 significantly”); see also *Reddick v. Chater*, 157 F.3d 715, 724 (9th Cir. 1998)
22 (“Claimant periodically advised [his] doctors when [he] was feeling somewhat
23

1 are required to address evidence of medication side effects,⁷⁵ and the record
2 includes several indications of significant side effects and even suggests that
3 Plaintiff's headaches may be caused, at least in part, by his prescribed
4 medications;⁷⁶ and (4) as to his headaches, Plaintiff described two distinct kinds of
5 headaches/migraines, and he explained that his doctors would not continue with
6 the migraine treatments because they were ineffective.⁷⁷

7 **D. Conclusion: Remand is required.**

8 The ALJ's errors discussed above require reversal. Remand for further
9 proceedings is necessary because Plaintiff's disability is not clearly established by
10

11
12 better. This is unlikely behavior for a person intent on overstating the severity of
13 [his] ailments.”).

14 ⁷⁵ See 20 C.F.R. §§ 404.1529(c)(3), 416.929(c)(3); SSR 16-3p, 2016 WL 1119029, at
15 *7.

16 ⁷⁶ See, e.g., AR 987, 979.

17 ⁷⁷ See AR 91–92. Absent more, it is unclear why Plaintiff should be faulted for the
18 fact that his doctors did not discuss with him the three specific medications that
19 the ALJ thought might help his migraines. See *id.*; AR 23 (stating that “claimant
20 admitted at the hearing that he has sought no treatment for migraines in
21 approximately one year, and that he has not discussed advanced treatments with
22 his doctor (e.g., AJOVY, Aimovig, Emgality)”).
23

1 the current record.⁷⁸ On remand, the ALJ shall conduct anew the disability
2 evaluation, beginning at step two.

3 With respect to the medical-opinion evidence, as to each medical source, the
4 ALJ must meaningfully articulate the supportability and consistency of the
5 source's medical opinions. The ALJ shall further develop the record if he deems it
6 necessary. To this end, the Court encourages the ALJ to receive testimony from
7 one or more medical expert qualified to address those of Plaintiff's claimed
8 impairments which are supported by at least some objective medical evidence,
9 specifically including but not limited to Plaintiff's chronic pain, mental disorders
10 (and the likely impact of chronic pain on the same), hand disorders/carpal tunnel
11 syndrome, and migraines/headaches.⁷⁹

12 If the ALJ again discounts Plaintiff's symptom reports on remand, the ALJ
13 must articulate clear and convincing reasons for doing so.⁸⁰ General findings are
14 insufficient because the Court cannot affirm discounting Plaintiff's symptoms for a
15 reason not articulated by the ALJ.⁸¹ The ALJ must identify what symptoms are
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17 ⁷⁸ See *Leon v. Berryhill*, 800 F.3d 1041, 1045 (9th Cir. 2017); *Garrison*, 759 F.3d at
18 1020.

19 ⁷⁹ ALJs are not empowered to render medical opinions by independently assessing
20 clinical findings. See *Tackett v. Apfel*, 180 F.3d 1094, 1102–03 (9th Cir. 1999).

21 ⁸⁰ *Ghanim*, 763 F.3d at 1163 (quoting *Lingenfelter*, 504 F.3d at 1036).

22 ⁸¹ See *Garrison*, 759 F.3d at 1010.
23

1 being discounted and what evidence undermines these symptoms.⁸² When
2 assessing Plaintiff's mental health symptoms, the ALJ is encouraged to give more
3 weight to the mental health findings made during mental health examinations or
4 treatment sessions, rather than during appointments for solely physical
5 conditions.⁸³

6 V. Conclusion

7 Accordingly, IT IS HEREBY ORDERED:

- 8 1. Plaintiff's Motion for Summary Judgment, **ECF No. 12**, is
9 **GRANTED**.
- 10 2. The Commissioner's Motion for Summary Judgment, **ECF No. 13**, is
11 **DENIED**.
- 12 3. The Court **REVERSES** the decision of the ALJ and **REMANDS** this
13 matter to the Commissioner of Social Security for further proceedings
14 pursuant to sentence four of 42 U.S.C. § 405(g).

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18 ⁸² See *Garrison*, 759 F.3d at 1010 (quoting *Lester*, 81 F.3d at 834, and *Thomas v.*
19 *Barnhart*, 278 F.3d 947, 958 (9th Cir. 2002) (requiring the ALJ to sufficiently
20 explain why he discounted claimant's symptom claims)).

21 ⁸³ See AR 364–65. See *Ford* 950 F.3d at 1156 (comparing psychologist's mental
22 health findings against findings from other mental health professionals).

1 4. The Clerk's Office shall enter **JUDGMENT** in favor of Plaintiff.

2 5. The case shall be **CLOSED**.

3 IT IS SO ORDERED. The Clerk's Office is directed to file this order and
4 provide copies to all counsel.

5 DATED this 28th day of September 2022.

6 s/Edward F. Shea

7 EDWARD F. SHEA
8 Senior United States District Judge